

Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based;

(26) Written affirmation from an officer of the Eligible Lender or other Holder confirming that it is in good standing with DOE's and other Federal agencies' loan guarantee programs;

(27) A list of all of the requirements contained in this part and the solicitation and where in the Application these requirements are addressed;

(28) A statement from the Applicant that it believes that there is "reasonable prospect" that the Guaranteed Obligations will be fully paid from project revenue; and

(29) Any other information requested in the invitation to submit an Application or requests from DOE in order to clarify an Application;

(c) DOE will not consider any Application complete unless the Applicant has paid the First Fee and the Application is signed by the appropriate entity or entities with the authority to bind the Applicant to the commitments and representations made in the Application.

**§ 609.7 Programmatic, technical and financial evaluation of Applications.**

(a) In reviewing completed Applications, and in prioritizing and selecting those to whom a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, the applicable solicitation, and this part. Applications will be considered in a competitive process, *i.e.* each Application will be evaluated against other Applications responsive to the Solicitation. Greater weight will be given to applications that rely upon a smaller guarantee percentage, all else being equal. Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of the potential loan guarantee. Applications will be denied if:

(1) The project will be built or operated outside the United States;

(2) The project is not ready to be employed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the project, does not have

the potential to be employed in other commercial projects in the United States, and is not or will not be available for further commercial use in the United States;

(3) The entity or person issuing the loan or other debt obligations subject to the loan guarantee is not an Eligible Lender or other Holder, as defined in § 609.11 of this part;

(4) The project is for demonstration, research, or development.

(5) The project does not avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases; or

(6) The Applicant will not provide an equity contribution.

(b) In evaluating Applications, DOE will consider the following factors:

(1) To what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases;

(2) To what extent the new or significantly improved technology to be employed in the project, as compared to Commercial Technology in general use in the United States, is ready to be employed commercially in the United States, can be replicated, yields a commercially viable project or service in the use proposed in the project, has potential to be employed in other commercial projects in the United States, and is or will be available for further commercial use in the United States;

(3) To what extent the new or significantly improved technology used in the project constitutes an important improvement in technology, as compared to Commercial Technology, used to avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases, and the Applicant has a plan to advance or assist in the advancement of that technology into the commercial marketplace;

(4) The extent to which the requested amount of the loan guarantee, the requested amount of Guaranteed Obligations and, if applicable, the expected amount of any other financing or credit arrangements are reasonable relative to the nature and scope of the project;

## § 609.8

## 10 CFR Ch. II (1–1–10 Edition)

(5) The total amount and nature of the Eligible Project Costs and the extent to which Project Costs are funded by Guaranteed Obligations;

(6) The likelihood that the project will be ready for full commercial operations in the time frame stated in the Application;

(7) The amount of equity commitment to the project by the Applicant and other principals involved in the project;

(8) Whether there is sufficient evidence that the Applicant will diligently pursue the project, including initiating and completing the project in a timely manner;

(9) Whether and to what extent the Applicant will rely upon other Federal and non-Federal governmental assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the project and how such assistance will impact the project;

(10) The feasibility of the project and likelihood that the project will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(11) The levels of safeguards provided to the Federal government in the event of default through collateral, warranties, and other assurance of repayment described in the Application, including the nature of any anticipated inter-creditor arrangements;

(12) The Applicant's capacity and expertise to successfully operate the project, based on factors such as financial soundness, management organization, and the nature and extent of corporate and personal experience;

(13) The ability of the applicant to ensure that the project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

(14) The levels of market, regulatory, legal, financial, technological, and other risks associated with the project and their appropriateness for a loan guarantee provided by DOE;

(15) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the project and the nature,

scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the project; and

(16) Such other criteria that DOE deems relevant in evaluating the merits of an Application.

(c) During the Application review process DOE may raise issues or concerns that were not raised during the Pre-Application review process where a Pre-Application was requested in the applicable solicitation.

(d) If DOE determines that a project may be suitable for a loan guarantee, DOE will notify the Applicant and Eligible Lender or other Holder in writing and provide them with a Term Sheet. If DOE reviews an Application and decides not to proceed further with the issuance of a Term Sheet, DOE will inform the Applicant in writing of the reason(s) for denial.

### **§ 609.8 Term sheets and conditional commitments.**

(a) DOE, after review and evaluation of the Application, additional information requested and received by DOE, potentially including a preliminary credit rating or credit assessment, and information obtained as the result of meeting with the Applicant and the Eligible Lender or other Holder, may offer to an Applicant and the Eligible Lender or other Holder detailed terms and conditions that must be met, including terms and conditions that must be met by the Applicant and the Eligible Lender or other Holder.

(b) The terms and conditions required by DOE will be expressed in a written Term Sheet signed by a Contracting Officer and addressed to the Applicant and the Eligible Lender or other Holder, where appropriate. The Term Sheet will request that the Project Sponsor and the Eligible Lender or other Holder express agreement with the terms and conditions contained in the Term Sheet by signing the Term Sheet in the designated place. Each person signing the Term Sheet must be a duly authorized official or officer of the Applicant and Eligible Lender or other Holder. The Term Sheet will include an expiration date on which the terms offered